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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/790,985	03/02/2004	Randall A. Addington	70539	1292

27975 7590 04/27/2005

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EXAMINER

PRONE, JASON D

ART UNIT	PAPER NUMBER
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3724

DATE MAILED: 04/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/790,985

Applicant(s)

ADDINGTON ET AL.

Examiner

Jason Prone

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM  
THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 March 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 08/16/04.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## DETAILED ACTION

### *Drawings*

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: on page 2 line 16, items "22" and "32". Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the examiner does not accept the changes, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

2. The drawings are objected to because In Figure 3, the label "CUTTING EDGE 64" and it's corresponding reference line should be deleted. Also, Figure 3 should include hidden lines to represent the band segment when looking threw the top portion. In Figure 5, the second or bottom occurrence of item "67" should be replaced with "68". In Figures 3-5, the terms "SIDE VIEW", "TOP SIDE VIEW", and "TOP VIEW" should be deleted from their respective Figures. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement-drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being

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amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the examiner does not accept the changes, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 5-8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

5. Regarding claims 5 and 9, the phrase "and the like" renders the claim(s) indefinite because the claim(s) include(s) elements not actually disclosed (those encompassed by "and the like"), thereby rendering the scope of the claim(s) unascertainable. See MPEP § 2173.05(d).

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1-3 are rejected under 35 U.S.C. 102(b) as being anticipated by Jones (6,101,720).

In regards to claim 1, Jones discloses the same invention including a cutting tool (10) comprising a generally arcuate-shaped top portion (30 in Fig. 2) and a curvilinear band portion extending therefrom (28 in Fig. 2), and the band portion includes a web-severing cutting element that is sized and shaped to penetrate through and sever the webbing layer as the tool is rotated around the container (52).

In regards to claims 2 and 3, Jones discloses the same invention including then web-severing element comprises a generally cord-configured cutting edge (52) that is parallel to the arcuate-shaped top portion (Fig. 2) and the arcuate-shaped top portion includes a tab portion that allows the user to rotate the tool (24).

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jones. Jones discloses the invention but fails to disclose that the vertical spacing between the cutting element and the top portion are adjustable. Hyer et al. (6,112,417) discloses a blade with an adjustable height showing that it is old and well known to adjust the height of a blade to cooperate with the work piece to be cut. Therefore, it would have been obvious to have made the distance between the cutting element and the top portion adjustable to allow the tool to be used on cylinders with different dimensions requiring alternate cutting heights. Moreover, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have made the cutting element adjustable, since it has been held that the provision of adjustability, where needed, involves only routine skill in the art. *In re Stevens*, 101 USPQ 284 (CCPA 1954).

10. Claims 5-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jones in view of Jacobs (4,567,655). In regards to claim 5, Jones discloses the invention including a cutting tool (10) comprises a generally arcuate-shaped top portion that terminates at an outer edge portion (30 in Fig. 2), a generally curvilinearly shape band segment extending perpendicularly from the outer edge portion (28 in Fig. 2), the top portion and the band segment being sized to be placed against and fit against the container (Fig. 1), and the band segment engages the outer cylindrical sidewall (Fig. 3). Still in regards to claim 5, Jones discloses a cutting edge that projects from the interior surface portion of the band segment so as to be generally parallel to the top portion (52), the cutting edge is configured as a semi-dull edge (52), and the cutting edge is spaced from the top portion a prescribed distance (Fig. 5).

In regards to claims 6 and 7, Jones discloses the cutting edge comprises a generally cord-configured cutting edge (52) and the top portion includes a tab portion that is adapted to allow a user to rotate the cutting tool (24).

However, Jones fails to disclose that the top portion rests against the container lid while the band segment engages the outer cylindrical sidewall of the container lid and the top portion acts as a guide when it is placed against the lid. Jacobs teaches top portion that rests against the container lid while the band segment engages the outer cylindrical sidewall of the container lid (30) and the top portion acts as a guide when it is placed against the lid (Fig. 4). Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to have provided Jones with a top portion extension, as taught by Jacobs, to prevent the blade from oscillating up and down when the tool is rotating around the work piece thereby ending up with a straight cut.

11. Claims 9-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jones in view of Jacobs. In regards to claim 9, Jones discloses the invention including providing a cutting tool (10) having a generally arcuate-shaped top portion (30 in Fig. 2) and a curvilinear band portion extending therefrom (28 in Fig. 2) so as to generally conform with and readily placable against the lid (Fig. 1), and the band portion includes a web-severing cutting edge that is sized and shaped to penetrate through and sever the webbing layer (52) as the tool is rotated around the lid (Fig. 5).

In regards to claims 10 and 11, Jones discloses the web-severing cutting element comprises a generally cord-configured cutting edge that is parallel to the top

portion (52) and the top portion includes a tab portion that is adapted to allow the user to rotate the cutting tool around the lid (24).

However, Jones fails to disclose placing the top portion against the lid so that the top portion acts as a guide and locates the band segment adjacent to the outer cylindrical wall and allows the cutting edge to be urged against and sever the portion of the webbing material covering an annular space. Jacobs teaches placing the top portion against the lid so that the top portion acts as a guide and locates the band segment adjacent to the outer cylindrical wall and allows the cutting edge to be urged against and sever the portion of the webbing material covering an annular space (Fig. 4). Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to have provided Jones with a top portion extension, as taught by Jacobs, to prevent the blade from oscillating up and down when the tool is rotating around the work piece thereby ending up with a straight cut.

12. Claims 8 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jones in view of Jacobs. Jones and Jacobs disclose the invention but fail to disclose that the vertical spacing between the cutting element and the top portion are adjustable. Hyer et al. (6,112,417) discloses a blade with an adjustable height showing that it is old and well known to adjust the height of a blade to cooperate with the work piece to be cut. Therefore, it would have been obvious to have made the distance between the cutting element and the top portion adjustable to allow the tool to be used on cylinders with different dimensions requiring alternate cutting heights. Moreover, it would have been obvious to one having ordinary skill in the art at the time the invention was made



to have made the cutting element adjustable, since it has been held that the provision of adjustability, where needed, involves only routine skill in the art. *In re Stevens*, 101 USPQ 284 (CCPA 1954).

### ***Conclusion***

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Heeren, Thom, Magill, Ross, Folger, Silberhorn, Davis, Vaive, Genetti, Sr., and Imer.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason Prone whose telephone number is 571-272-4513. The examiner can normally be reached on 7:30-5:00, Mon - (every other) Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Allan N. Shoap can be reached on 571-272-4514. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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April 13, 2005



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